



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Site Support Services, Inc.

File: B-270229

Date: February 13, 1996

Paul W. Nolan, Esq., Thurlow & Nolan, for the protester.
Janet N. Repka, Esq., Department of Defense, for the agency.
Adam Vodraska, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency had a compelling reason to cancel a solicitation after bid opening, where its estimate of services needed as specified in the solicitation was inaccurate and the solicitation's evaluation scheme did not ensure that award would result in the lowest cost to the government.

DECISION

Site Support Services, Inc. protests the cancellation of invitation for bids (IFB) No. MDA946-95-B-A017, issued by the Department of Defense, Washington Headquarters Services, for heating, ventilation and air conditioning (HVAC) system, preventive maintenance, and repair services at the Hoffman I Building, Alexandria, Virginia.

We deny the protest.

The IFB contemplated the award of a fixed-price contract to the responsive, responsible bidder submitting the lowest total price for a base year and 4 option years. The services to be performed under the contract included basic HVAC mechanical maintenance service and additional service such as correction of initial deficiencies and minor repair work. With regard to the additional service, the IFB established a minimum order of 20 hours per year and a maximum order of 240 hours per year, which was the number used for evaluation purposes and which the IFB stated was the government's best estimate of the additional service required.¹

¹According to the IFB, the number of labor hours and the cost of materials would be negotiated at the time each order for additional service is issued.

Under the IFB's evaluation scheme, bids were evaluated by extending the monthly price bid for the basic service for the base year and each of the 4 option years. Then, the bidder's price per labor hour for the additional service was multiplied by the agency's estimate of 240 hours of additional service for the base year and each option year. The extended amount for the basic service was then combined with the extended amount for the additional service to determine the total evaluated bid price.

Site submitted the low bid in response to the IFB. Site bid a monthly price of \$1,488 for the basic service, which, when extended for the full 5-year period, resulted in a total price of \$89,280 for the basic service. Site entered a bid of zero dollars for the hourly labor rate for additional service, resulting in a total evaluated bid price of \$89,280. NWM Mechanical Contractors, Inc., the second low bidder, bid a monthly price of \$936 for the basic services, which resulted in an extended price of \$56,160, and bid an hourly labor rate of \$50 for the additional service, resulting in a total evaluated bid price of \$116,160.

In evaluating bids, the contracting officer determined that although Site was the apparent low bidder, its bid was materially unbalanced. Specifically, the contracting officer found that Site's zero bid for the additional service was significantly less than its cost for that service and its price for the basic service was overstated. The contracting officer concluded that there was a reasonable doubt, depending on the amount of additional service actually ordered, that Site's bid would result in the lowest overall cost to the government. Accordingly, the contracting officer rejected Site's bid, and Site protested to our Office.

Meanwhile, in response to Site's method of pricing the additional service, the contracting officer checked the accuracy of the IFB's 240-hour annual estimate for the additional service and found that, based on historical data, the best estimate of the agency's needs for the additional service was actually 66 hours per year. The contracting officer determined that the IFB did not accurately state the government's minimum needs and, depending on the amount of additional service actually ordered, might not ensure that award would result in the lowest overall cost to the government. The contracting officer also found a number of other solicitation defects, including that the IFB provided that the bidder's offered hourly rate for the additional service would be used to calculate deductions for the contractor's failure to perform some services, which effectively allowed bidders to establish their own liquidated damages rates; in Site's case, this would result in a liquidated damages rate of \$0. The contracting officer canceled the IFB with the intention of amending the solicitation and resoliciting the requirement. We dismissed Site's protest of the rejection of its bid as academic, and Site protested the cancellation of the solicitation.

Because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed, a contracting officer must have a compelling reason to cancel an IFB after bid opening. Federal Acquisition Regulation § 14.404-1(a)(1); Ferguson-Williams, Inc., B-258460; B-258461, Jan. 24, 1995, 95-1 CPD ¶ 39. Cancellation after bid opening is proper where an IFB does not contain the agency's best estimate of what will be required, or where an IFB's evaluation scheme does not ensure that award will in fact be based on the lowest cost to the government. S.W. Monroe Constr. Co., B-256382, June 10, 1994, 94-1 CPD ¶ 362. Either of these flaws renders an IFB materially deficient. Id.

Here, due to the inaccuracy of the agency's 240 hour per year estimate for additional service and given Site's method of pricing its bid, the IFB's evaluation scheme did not ensure that award would result in the lowest cost to the government. For example, if the agency's revised estimate of 66 hours per year were applied in evaluating bids,² Site's total evaluated bid price would remain \$89,280 but NWM's total evaluated bid price would be \$72,660. Indeed, given Site's and NWM's respective pricing of additional service, acceptance of Site's bid would result in the lowest cost to the government only if the agency orders more than 132 hours of additional service per year. As noted above, the government realistically expects to order only 66 hours of additional service per year. In these circumstances, the IFB was materially defective, so that cancellation of the solicitation was proper. S.W. Monroe Constr. Co., supra.

The protest is denied.

Comptroller General
of the United States

²Although the protester disagrees with the agency's revised estimate, it has not shown that the higher 240-hour estimate used in the canceled IFB more accurately reflects the needs of the agency. We generally consider agencies to be the best judges of their own needs. Duramed Homecare, B-260047, May 24, 1995, 95-1 CPD ¶ 257.